

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 897 of 1991****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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G S R T C - Appellant(s)**Versus****BHAGWATLAL N LIMBHETWALA & 1 - Defendant(s)**

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Appearance :

MRS.JYOTI MEHTA for Appellant(s) : 1

MR SS BELSARE for Respondent : 1

None for Respondent: 2

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 10/09/2007****ORAL JUDGMENT**

1. Mrs.Jyoti Mehta, learned counsel for the
appellant; Mr.S.S.Belsare, learned counsel for
the respondent no.1; none for the respondent

no.2 though served.

2.The appellant, being aggrieved by the award dated 28.9.90, passed by the learned Motor Accidents Claims Tribunal [Main] Bharuch, in M.A.C. Petition No. 19 of 1985, is before this Court with a submission that the learned Tribunal erred in awarding a sum of Rs.50,000/- in excess to the entitlement of the respondent no.1.

3.As the challenge in this appeal is confined to the quantum only, this Court is not required to refer to the facts of the accident, liability of the driver etc.

4.After taking me through the evidence, the learned counsel for the appellant submitted that the Tribunal, despite holding that the claimant-respondent no.1 was not required to close his shop and could have managed affairs of the said shop after employing somebody, erred in holding that the monthly income of the claimant could be Rs.2,000/- and monthly loss on basis of 25% permanent partial disability could be Rs.500/-. She also submitted that the Tribunal was

unjustified in applying multiplier of 16. According to her, proper multiplier would be 10. Shri S.S. Belsare, learned counsel for the respondent no.1 submitted that from the income-tax return of the claimant for the year 1983-84, it would clearly appear that the net yearly income of the claimant was Rs. 52,425/- and under the circumstances, the Tribunal was unjustified in holding that the claimant's monthly income could be Rs. 2,000/- only. According to her, this Court should interfere on the question of assessment of income, should redecide the matter and only then, the question of multiplier would arise. He, however, submitted that in case like present, application of multiplier of 10 would be on the lower side and the Tribunal was right in applying the multiplier of 16.

5. From the income-tax return for the year 1983-84, it would clearly appear that the net yearly income of the claimant was Rs. 52,425/-. The Tribunal was required to assess the income on the basis of the income returned in the Income-

tax return. However, in absence of the Cross Objections, it will not be possible for this Court to re-assess the evidence and come to a different finding that the income of the claimant was more than Rs. 4,000/- per month. The Tribunal, in the opinion of this Court, was right in holding that the claimant had suffered permanent partial disability to the extent of 25% and also did not err, in absence of challenge to the finding that the claimant was negligent to the extent of 20%.

6. After hearing the parties, I hold that the Tribunal was unjustified in applying the multiplier of 16. Looking to the facts of the case and the age of the claimant, multiplier of 13 ought to have been applied. I accordingly apply multiplier of 13 and hold that future loss of income would be Rs.78,000/-. The award made by the Tribunal on the other counts is maintained, but however, total amount is reduced from Rs. 1,35,500/- to Rs. 1,17,500/-. Out of the said amount, driver's liability would be 80% and therefore, the claimant would be entitled to

80% of Rs. 1,17,500/-, that is, Rs. 94,000/-.

7. The award made by the learned Tribunal though on the merits is upheld, but the amount ordered to be awarded in favour of the claimant is reduced from Rs. 1,35,500/- to Rs. 1,17,500/-. Rest of the award in relation to interest etc. as made by the Tribunal shall stand.

8. The appeal is allowed to the extent indicated above. No costs.

[R.S. GARG, J.]

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